REMARKS/ARGUMENTS

This Amendment is in response to the Office Action mailed 02/02/2004. In the Office Action, the Examiner objected to the drawings and the specification and rejected claims 1-20 under 35 U.S.C. § 103. Reconsideration in light of the remarks made herein is respectfully requested.

Claims 1-20 remain in this application.

Double Patenting

2. Claims 1-20 were rejected under the judicially created doctrine of the obviousness-type double patenting of the claim of copending Application No. 09/271,008 and claims of copending Application No. 09/131,141. The Examiner asserts that although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed invention of the instant application encompasses the claimed subject matters of the copending applications.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Therefore, Applicants acknowledge and offer submission of a terminal disclaimer to obviate the obviousness-type double patenting rejection upon allowance of the pending claims. Applicants respectfully request that the Examiner hold the obviousness-type double patenting rejection in abeyance until allowance of the pending claims.

Rejection Under 35 U.S.C. § 103

4. Claims 1-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Simmons et al. (US 6,192,028) ("Simmons") in view of Frazier et al. (US 5,784,559) ("Frazier"). Applicants respectfully traverse the rejection and contend that a *prima facie* case of obviousness has not been established.

As the Examiner is aware, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *MPEP §2143, p. 2100-124 (8th Ed., rev. 1, Feb. 2003).* Applicants respectfully contend that there is no suggestion or motivation to combine their teachings, and thus no *prima facie* case of obviousness has been established.

The Office Action states that the port vector FIFO assigns the frame pointer to the appropriate output queue, corresponds to the claimed "based on a relative order in which the data frames are transmitted on each of the virtual links." Applicants respectfully disagree. Simmons merely discloses transferring the data frame from the receive FIFO to the external memory (Simmons, col. 7, lines 62, 64). This is done merely based on the header information, not according to the complete reception of the frame (Simmons, col. 1-4). The header information does not contain any information regarding the order, priority, or the pointer values.

Neither Simmons nor Frazier, taken alone or in any combination, discloses or even suggests one or more of the following: (1) receiving a plurality of indications denoting commencement of data frame transmission as recited in claims 1, 10, 16 and 19; (2) assigning pointer values to corresponding records based on at least in part on a relative order as recited in claims 1, 10, 16 and 19; or (3) the pointer value determining an order according to complete reception of the frame in which the respective data frames are promoted as recited in claims 1, 10, 16 and 19. Furthermore, Simmons merely discloses determining each receive FIFO individually, not in an aggregated link including a plurality of links. (Simmons, col. 7, lines 44-46). More importantly, Simmons teaches away from the invention by disclosing that the external rules checker "enables decision to be made in an order independent from the order in which the frames were received by the multiport switch." (Simmons, col. 6, lines 54-56). Simmons also teaches "random-based ordering in the decision queue". (Simmons, col. 6, lines 51-52). A random order implies that there is no order.

Accordingly, Applicants respectfully request the rejections under 35 U.S.C. §103(a) be withdrawn because a *prima facie* case of obviousness has not been established.

Conclusion

Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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